

USDOL/OALJ Reporter

[*Bausemer v. Flour Daniel*](#), 90-ERA-16 (Sec'y June 14, 1994)

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DATE: June 14, 1994
CASE NOS. 90-ERA-16 & 17

IN THE MATTER OF

FRANK R. BAUSEMER

COMPLAINANT,

v.

FLOUR DANIEL,

and

COMMANCHE PEAK STEAM ELECTRIC STATION,

and

BROWN & ROOT INCORPORATED,

and

TEXAS UTILITIES ELECTRIC,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

ORDER APPROVING SETTLEMENT
AND DISMISSING CASE

The Administrative Law Judge (ALJ) submitted a Recommended Decision and Order (R. D. and O.) in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1988), recommending that this matter be dismissed with prejudice on the basis of a settlement which the ALJ found fair, adequate and reasonable. R. D. and O. at 2. The parties submitted the settlement and a Mutual Release to the ALJ "under seal," and the parties

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requested, and the ALJ recommended, that the record in this case be kept under seal.

The Secretary has held in a number of cases with respect to

confidentiality provisions in settlement agreements that the FOIA "requires agencies to disclose requested documents unless they are exempt from disclosure" *Plumlee v. Alyeska Pipeline Service Co.*, Case Nos. 92-TSC-7, 10; 92-WPC-6, 7, 8, 10, Sec'y. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip. op. at 6. See also *Mitchell v. Arizona Public Service Co.*, Case Nos. 92-ERA-28, 29, 35, 55, Sec'y. Final Order Approving Settlement Agreement and Dismissing Cases, Jun. 28, 1993, slip op. at 2 (request to place settlement agreement under seal denied); *Davis v. Valley View Ferry Authority*, Case No. 93-WPC-1, Sec'y. Final Order Approving Settlement and Dismissing Complaint, Jun. 28, 1993, slip op. at 2 n.1 (parties' submissions become part of record and are subject to FOIA); *Ratliff v. Airco Gases*, Case No. 93-STA-00005, Sec'y. Final Order Approving Settlement Agreement Jun. 25, 1993, slip op. at 2 (same); *Reid v. Tennessee Valley Auth.*, Case No. 91-ERA-17, Sec'y. Order Approving Settlement and Dismissing Complaint with Prejudice, Aug. 31, 1992, slip op. at 3 n.1 (same); *Daily v. Portland Gen'l. Elec. Co.*, Case No. 88-ERA-40, Sec'y. Order Approving Settlement and Dismissing Case, Mar. 1, 1990, slip op. at 1 n.1 (same). The hearing record in this case, including the Settlement Agreement, therefore, are agency records which must be made available for public inspection and copying under the FOIA.

The Mutual Release, executed "in consideration of the payment of cash to [Complainant] pursuant to [the] Settlement Agreement" covers matters other than claims arising under the ERA. For the reasons set forth in *Poulos v. Ambassador Fuel Oil Co.*, Case No. 86-CAA-1, Sec. Order, November 2, 1987, slip op. at 2, I have limited my review of the Settlement Agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegations that Respondent violated the ERA.

The Settlement Agreement has been reviewed and I agree with the ALJ that its terms are a fair, adequate and reasonable settlement of Complainant's claims against respondent under the ERA. Accordingly, the complaint in this case is DISMISSED with prejudice. Complainant's Motion to Withdraw Complaint, March 31, 1990.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.